

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

FILED  
Clerk  
District Court

MAR 25 2008

UNITED STATES OF AMERICA,

Plaintiff,

v.

FIRST GROWTH CAPITAL, INC.,

Defendant.

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

MC 08 - 0015

Civil Action No.

5:07-CV-442 (CAR)

ORDER APPOINTING SBA AS RECEIVER OF DEFENDANT FIRST GROWTH

CAPITAL, INC.

This cause came upon the Motion of the United States of America on behalf of its agency, the United States Small Business Administration ("SBA"), for injunctive relief and for the appointment of SBA as receiver of First Growth Capital, Inc. ("First Growth"). After careful consideration,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This Court determines and adjudicates that First Growth is in violation of 15 U.S.C. §683(c) and 13 CFR § 107.205 by virtue of its default as alleged in the Complaint filed in the instant action.

2. The Court further determines that First Growth and its managers have had ample time to cure its default or develop a reasonable plan for the repayment of its debts. Because First Growth has been unable to do so and offers nothing more than a plea for the Court to endorse the status quo, the Court finds that SBA is entitled to the relief requested in its complaint.

3. Pursuant to the provisions 15 U.S.C. §687c, this Court hereby takes exclusive jurisdiction of First Growth Capital, Inc. and all of its assets and property, of whatever kind and wherever

located, and the United States Small Business Administration ("SBA") is hereby appointed Receiver of First Growth ("Receiver") to serve without bond until further order of this Court. The Receiver is appointed for the purpose of marshaling and liquidating all of First Growth's assets and satisfying the claims of creditors therefrom in the order of priority as determined by this Court.

4. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of First Growth under applicable state and federal law, by the Agreement of Limited Partnership, and Charter and/or By-Laws of said limited partnership, in addition to all powers and authority of a receiver at equity, and all powers and authority conferred upon the Receiver by the provisions of 15 U.S.C. § 687c and 28 U.S.C. § 754. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys and other agents of First Growth are hereby dismissed and the powers of any general partners are hereby suspended. Such persons and entities shall have no authority with respect to First Growth operations or assets, except to the extent as may hereafter be expressly granted by the Receiver. The Receiver shall assume and control the operation of First Growth and shall pursue and preserve all of its claims.

5. The Receiver is entitled to take immediate possession of all assets, bank accounts or other financial accounts, books and records and all other documents or instruments relating to First Growth. The past and/or present officers, managers, management company, officers, directors, agents, trustees, attorneys, accountants, and employees of First Growth, as well as all those acting in their place, are hereby ordered and directed to turn over to the Receiver forthwith all books, records, documents, accounts and all other instruments and papers of and relating to First Growth and all of First Growth's assets and all other assets and property of the limited partnership, whether real or personal. The former officers of First Growth shall furnish a written statement within five (5)

days after the entry of this Order, listing the identity, location and estimated value of all assets of First Growth, a list of all agents, employees (and job titles thereof), other personnel, attorneys, accountants and any other agents or contractors of First Growth, as well as the names, addresses and amounts of claims of all known creditors of First Growth. Within thirty (30) days following the entry of this Order, the former officers of First Growth shall also furnish a written report describing all assets. All persons and entities having control, custody or possession of any assets or property of First Growth are hereby directed to turn such assets and property over to the Receiver.

6. The Receiver shall promptly give notice of its appointment to all known officers, managers, management companies, officers, directors, agents, employees, shareholders, creditors, debtors, and limited partners of First Growth, as the Receiver deems necessary or advisable to effectuate the operation of the receivership. All persons and entities owing any obligation, debt, or distribution with respect to a partnership interest to First Growth shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if First Growth had received such payments.

7. The Receiver is hereby authorized to open such Receiver's bank accounts, at banking or other financial institutions, to extend credit on behalf of First Growth, to utilize SBA personnel, and to employ such other personnel as it may deem necessary to effectuate the operation of the receivership including, but not limited to, attorneys, accountants, consultants and appraisers, and is further authorized to expend receivership funds to compensate such personnel in such amounts and upon such terms as the Receiver shall deem reasonable in light of the usual fees and billing practices and procedures of such personnel. The Receiver is not required to obtain Court approval prior to the disbursement of receivership funds for payments to personnel employed by

the Receiver or for expenses that the Receiver deems advantageous to the orderly administration and operation of the receivership. In addition, the Receiver is authorized to reimburse SBA for travel expenses incurred by SBA personnel in the establishment and administration of the receivership. The Receiver may, without further order of this Court, transfer, compromise, or otherwise dispose of any claim or asset in the ordinary course of business, other than real estate.

8. First Growth's past and/or present managers, management companies, officers, directors, agents, attorneys, shareholders, employees, accountants, debtors, creditors, managers, limited partners and any other appropriate persons or entities (including without limitation, the defendant's portfolio of small business concerns and financial institutions doing business with defendant and/or defendant's portfolio of small business concerns) shall answer under oath to the Receiver all questions which the Receiver may put to them and produce any documents as required by the Receiver regarding the business of said limited partnership, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to First Growth. In the event that the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make its discovery request(s) in accordance with the Federal Rules of Civil Procedure.

9. The parties to any and all civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving the Receiver for First Growth, First Growth or any assets of First Growth, including subsidiaries and partnerships, wherever located, and excluding the instant proceeding, or involving any of First Growth's past or present officers, managers, management companies, officers, directors, agents, or limited partners sued for, or in connection with, any action taken by them while acting in such capacity, whether sued as plaintiff, defendant, third-party

plaintiff, third-party defendant, or otherwise, are enjoined from commencing or continuing any such legal proceeding or from taking any action in connection with any such proceeding or any such asset.

10. All civil legal proceedings of any nature, including but not limited to bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other action of any nature involving the Receiver for First Growth, First Growth or any assets of First Growth, including subsidiaries and partnerships, wherever located, and excluding the instant proceeding, or any of First Growth's past or present officers, managers, management companies, officers, directors, agents, or limited partners sued for, or in connection with, any action taken by them while acting in such capacity, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise, are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court.

11. First Growth and its past and/or present general partners, managers, management companies, directors, officers, limited partners, agents, employees or other persons or entities acting in concert or participating therewith are hereby prohibited and enjoined from either directly or indirectly taking any actions or causing any such action to be taken which would (a) dissipate the assets and/or property of First Growth to the detriment of First Growth or of the Receiver appointed in this cause, including, but not limited to, destruction of corporate records, or (b) violate the Small Business Investment Act of 1958, as amended, 15 U.S.C. 661 et. seq., or the regulations promulgated thereunder, ("Regulations"), 13 C.F.R. §107.1 et. seq.

12. The Receiver is authorized to borrow on behalf of First Growth, from the SBA, up to \$100,000 and is authorized to cause First Growth to issue Receiver's Certificates of Indebtedness in

the principal amounts of the sums borrowed, which certificates will bear interest at or about 10 percent per annum and will have a maturity date no later than 18 months after the date of issue. Said Receiver's Certificates of Indebtedness shall have priority over all other debts and obligations of First Growth, excluding administrative expenses of the Receivership, whether currently existing or hereinafter incurred, including without limitation any claims of general or limited partners of First Growth.

**SO ORDERED** this 11<sup>th</sup> day of March, 2008.

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S/ C. Ashley Royal  
C. ASHLEY ROYAL  
United States District Judge

SCS/ssh